

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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LYSSETTE MILAGROS SANTIAGO-
ORTIZ,

Plaintiff,

v.

PUBLIC BROADCASTING SERVICE,
et al.,

Defendants.

Civil No. 12-1964 (JAF)

5
6 **ORDER**

7 On November 28, 2012, Lyssette Milagros Santiago-Ortiz filed a complaint
8 against Public Broadcasting Service (“PBS”), the Puerto Rico Corporation for Public
9 Broadcasting (“PRCPB”), and their employees and insurer, alleging a hostile work
10 environment and wrongful termination and discrimination on account of her age, gender,
11 and alleged disability, in violation of both federal and Puerto Rico law. On January 11,
12 2013, PRCPB moved to dismiss the summons served on grounds that it was sent through
13 certified mail, instead of being personally served. On February 6, 2013, Santiago-Ortiz
14 filed a Motion for the issuance of new summons and requested sixty additional days to
15 perfect service. (Docket No. 6.) We granted Santiago-Ortiz’s motion and extended the
16 time to perfect service until March 28, 2013. (Docket No. 8.) On March 7, 2013, the
17 summons we issued against PBS on February 13, 2012, was improperly served on
18 March 7, 2013, at the facilities of the PRCPB. On March 27, 2013, PRCPB filed a
19 motion to quash summons and dismiss the complaint filed against PBS, asserting

1 insufficiency of service of process under Rule 12(b)(5). (Docket No. 12.) The motion
2 remains unopposed. We quash the summons and dismiss the complaint as to PBS.

3 Fed.R.Civ.P. 12(b)(5) provides for dismissal of a complaint due to insufficiency of
4 service. A party filing a motion under Rule 12(b)(5) “is essentially contesting the manner
5 in which process of service was performed.” Ramirez de Arellano v. Colloides Naturels
6 Int'l, 236 F.R.D. 83, 85 (D.P.R.2006); see also Molinelli–Freytes v. Univ. of P.R., 727
7 F.Supp.2d 60 (D.P.R.2010). Specifically, “[a] Rule 12(b)(5) motion is the proper vehicle
8 for challenging the mode of delivery or the lack of delivery of the summons and
9 complaint.” 5B Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND
10 PROCEDURE § 1353 (3d ed.2010). The party raising the insufficiency of service bears the
11 burden of specifically establishing how plaintiff failed to satisfy the requirements of
12 service. Ramirez de Arellano, 236 F.R.D. at 85.

13 Generally, if the first service of process is ineffective, and the defects are curable,
14 we treat a motion to dismiss as a motion to quash service of process in the alternative,
15 and retain the case pending effective service. Ramirez de Arellano, 236 F.R.D. at 85 n. 4.
16 However, district courts possess broad discretion to dismiss the action, or retain the case
17 and quash the service made on the defendant. Id.

18 Here, after multiple opportunities, Santiago-Ortiz failed to fulfill the requirements
19 of Fed.R.Civ.P. 4(h)(1)(A)(B) (service is complete by delivering a copy of the summons
20 and of the complaint to an officer, a managing or general agent, or any other agent
21 authorized by appointment or by law to receive service of process). Rule 4 addresses the
22 delivery or the lack of delivery of the summons and the complaint. Id. Insufficient
23 service of process includes, among others, service upon an improper person (see Olson v.
24 Federal Election Comm’n, 256 F.R.D. 8, 10 (D.D.C. 2009)), or if delivery is either never

1 accomplished or not accomplished within 120 days after commencement (see Rzayeva v.
2 U.S., 492 F. Supp. 2d 60, 74-75(D.Conn. 2007)). In addition to incorrectly identifying
3 PBS as a division of PRCPB in her complaint, Santiago-Ortiz delivered the summons for
4 PBS, incorporated under the laws of the District of Columbia, to the office of PRCPB—a
5 separate corporate entity, created as an instrumentality of the government of the
6 Commonwealth of Puerto Rico. Although PBS supports member stations and affiliates
7 with, among other things, marketing promotions and fundraising, PBS is not affiliated
8 with the management or personnel decisions of PRCPB. (Docket No. 12 at 3-4.)

9 For the foregoing reasons, we hereby **GRANT** codefendant PRCPB's motion to
10 quash summons and we dismiss the complaint as to PBS without prejudice.

11 **IT IS SO ORDERED.**

12 San Juan, Puerto Rico, this 9th day of May, 2013.

13 S/José Antonio Fusté
14 JOSE ANTONIO FUSTE
15 U. S. DISTRICT JUDGE